

United States District Court  
Northern District of New York  
LAWRENCE K. BAERMAN, CLERK

September 29, 2004

**FILED**

**UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF NEW YORK**

**JURY PLAN  
FOR THE  
RANDOM SELECTION OF GRAND AND PETIT JURORS**



**GENERAL ORDER (24)**

Dated: September 11, 2004

CIRCUIT COUNCIL APPROVAL: September 29, 2004

**AMENDED PLAN OF THE  
UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF NEW YORK  
FOR THE RANDOM SELECTION OF  
GRAND AND PETIT JURORS**

The jury plan heretofore adopted by this Court for the random selection of grand and petit jurors filed with the Court on July 1st, 1968 and including the amendments to the original plan is hereby revoked and rescinded, and the following plan is hereby adopted to become effective on the date approved by the Reviewing Panel of the U.S. Court of Appeals, Second Circuit.

**I. APPLICABILITY OF PLAN**

This plan is applicable to the Northern District of New York, there being no statutory divisions in the Northern District of New York, and the cities of **Albany, Auburn, Binghamton, Malone, Syracuse, Utica & Watertown** being designated by 28 U.S.C. Section 112 as the places of holding court, the district is hereby divided into divisions for jury selection purposes, as defined in 28 U.S.C. Section 1869(e).

1. **ALBANY DIVISION:** Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster, Warren & Washington.
2. **BINGHAMTON DIVISION:** Broome, Chenango, Delaware, Otsego, & Tioga.
3. **SYRACUSE / AUBURN DIVISION:** Cayuga, Cortland, Madison, Onondaga, Oswego, & Tompkins.
4. **UTICA DIVISION:** Fulton, Hamilton, Herkimer, Montgomery, & Oneida.
5. **WATERTOWN DIVISION:** Jefferson, Lewis, & St. Lawrence.
6. **MALONE DIVISION:** Clinton, Essex & Franklin.

The provisions of this plan apply to all divisions in the district.

## **II. POLICY**

This plan is adopted pursuant to and in recognition of the Congressional policy declared in Title 28, United States Code, as follows:

### **Section 1861--Declaration of Policy**

"It is the policy of the United States that all litigants in Federal Courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on the grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose."

### **Section 1862--Discrimination Prohibited**

"No citizen shall be excluded from service as a grand or petit juror in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status."

## **III. MANAGEMENT AND SUPERVISION OF JURY SELECTION PROCESS**

There shall be no jury commission in this district. The Clerk of the Court shall manage the jury selection process under the supervision and control of the Chief Judge, or such other District Judge or Judges as the Chief Judge may from time to time designate. In the event of the simultaneous absence, disability, or inability to act, of the Chief Judge and any other judges designated, the active district judge who is present in the district and has been in service the greatest length of time shall be authorized to act. The use of the word "clerk" in this plan contemplates the clerk and any or all of his or her deputies and any other person authorized by the Court to assist the clerk in the performance of functions under this plan.

**IV. RANDOM SELECTION FROM VOTER LISTS  
AND LISTS OF LICENSED MOTOR VEHICLE DRIVERS  
AND MASTER JURY WHEELS**

While voter registration lists represent a fair cross section of the community in each division of the Northern District of New York, an even greater number of citizens will be eligible for jury service if supplemental source lists are used. Accordingly, names of grand and petit jurors serving on or after the effective date of this plan shall be selected at random from voter registration lists of all counties in the relevant division and supplemented by, if available, lists of licensed drivers for these counties from the New York State Department of Motor Vehicles. These two lists shall be merged and duplicate records purged. The Court takes notice that when two or more source lists are used, one person's name may appear more than once. A system will be developed, before any selection procedures begin, to eliminate as reasonably as possible such duplications. Should it appear that a person mailed a jury qualification form as outlined in Section V(a) has changed residence from one division of the Court to another division of the Court, that person's questionnaire shall be reviewed for determination of qualified status to serve as a grand or petit juror in the division in which the person currently resides. If the person is found qualified, that person's name shall be placed into the qualified wheel of the division in which the person currently resides.

The clerk shall maintain a master jury wheel or a master jury box, hereinafter referred to as a master jury wheel, for each of the divisions within the district.

Pursuant to 28 U.S.C. Section 1878, at the option of the district court, jurors may be qualified and summoned in a single procedure, in lieu of the two separate procedures otherwise provided for by the Jury Selection and Service Act and this Plan.

The clerk shall make the random selection of names for the master wheels as follows. There shall be selected for the master jury wheel for each division as a minimum approximately the following number of names:

- |                                      |                 |
|--------------------------------------|-----------------|
| <b>1. ALBANY DIVISION</b>            | <b>(20,000)</b> |
| <b>2. BINGHAMTON DIVISION</b>        | <b>(10,000)</b> |
| <b>3. SYRACUSE / AUBURN DIVISION</b> | <b>(20,000)</b> |
| <b>4. UTICA DIVISION</b>             | <b>(10,000)</b> |
| <b>5. WATERTOWN DIVISION</b>         | <b>(5,000)</b>  |
| <b>6. MALONE DIVISION</b>            | <b>(5,000)</b>  |

These numbers are as large as they are to allow for the possibility that some juror qualification forms, hereinafter mentioned, will not be returned, that some prospective jurors may be exempt by law or excused, and that some may not meet with the statutory qualifications. The clerk, based upon the court's experience and with the approval of the chief judge, may revise the minimum number of names for any master wheel without need for amendment to this plan. Furthermore, the chief judge of this district may order additional names to be placed in the master jury wheels from time to time as necessary.

At the clerk's option, and after consultation with the court, the selection of names from a complete source list database in electronic media for the master jury wheel may be accomplished by a purely randomized process through a properly programmed electronic data processing system. Similarly, at the option of the clerk and after consultation with the court, a properly programmed electronic data processing system for pure randomized selection may be used to select names from the master wheel for the purpose of summoning persons to serve as grand or petit jurors. Such random selections of names from the source list for inclusion in the master wheel by data computer personnel must insure that the names of persons residing in each of the counties within the jury division are placed in the master jury wheel, and that each county within the jury division is substantially proportionally represented in the master jury wheel in accordance with 28 U.S.C.

Section 1863(b)(3). The selection of names from the source list and the master wheel must also insure that the mathematical odds of any single name being picked are substantially equal.

The master jury wheel shall be emptied and refilled every four years between the date of the November general election and the following September.

This plan is based on the conclusion and judgment that the policy, purpose, and intent of the Jury Selection and Service Act of 1968, as amended, will be fully accomplished and implemented by the use of consolidated source lists. The consolidated lists will be comprised of the voter registration lists, and supplemented by, if available, lists of licensed drivers. The use of these source lists for an-at random selection of prospective grand and petit jurors will represent a fair cross-section of the community. This determination is supported by all the information this Court has been able to obtain after diligent effort and inquiry.

**V. DRAWING OF NAMES FROM THE MASTER  
JURY WHEEL:  
COMPLETING OF JURY QUALIFICATION FORM**

The plan hereby incorporates the provisions of 28 U.S.C. Section 1864, which reads as follows:

"(a) From time to time as directed by the district court, the clerk or a district judge shall publicly draw at random from the master jury wheel the names of as many persons as may be required for jury service. The clerk ... may upon order of the court, prepare an alphabetical list of the names drawn from the master jury wheel. Any list so prepared shall not be disclosed to any person except pursuant to the district court plan or pursuant to section 1867 or 1868 of this title. The clerk...shall mail to every person whose name is drawn from the master wheel a juror qualification form accompanied by instructions to fill out and return the form, duly signed and sworn, to the clerk... by mail within ten days.

If the person is unable to fill out the form another shall do it for him or her, and shall indicate that he or she has done so and the reason therefor. In any case in which it appears that there is an omission, ambiguity, or error in a form, the clerk... shall return the form with instructions to the person to make such additions or corrections as may be necessary and to return the form to the clerk...within ten days. Any person who fails to return a

completed juror qualification form as instructed may be summoned by the clerk...forthwith to appear before the clerk...to fill out a juror qualification form. A person summoned to appear because of failure to return a juror qualification form as instructed who personally appears and executes a juror qualification form before the clerk...may, at the discretion of the district court, except where his or her prior failure to execute and mail such form was willful, be entitled to receive for such appearance the same fees and travel allowance paid to jurors under section 1871 of this title. At the time of his or her appearance for jury service, any person may be required to fill out another juror qualification form in the presence of...the clerk or the court, at which time, in such cases as it appears warranted, the person may be questioned, but only with regard to his or her responses to questions contained on the form. Any information thus acquired by the clerk...may be noted on the juror qualification form and transmitted to the Chief Judge or such other district judge as the plan may provide.

"(b) Any person summoned pursuant to subsection (a) of this section who fail to appear as directed shall be ordered by the district court forthwith to appear and show cause for his or her failure to comply with the summons. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance with the summons may be fined not more than \$100 or imprisoned not more than three days, or both. Any person who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror may be fined not more than \$100 or imprisoned not more than three days, or both."

#### **VI. EXCUSES ON INDIVIDUAL REQUEST**

This Court finds and hereby states that jury service by members of the following occupational classes or groups of persons would entail undue hardships and extreme inconvenience to the member thereof, and serious obstruction and delay in the fair and impartial administration of justice, and their excuse will not be inconsistent with the Act and may be claimed, if desired, and shall be granted by the Court upon individual request: (1) persons having active care and custody of a child or children under 10 years of age whose health and/or safety would be jeopardized by their absence for jury service; (2) a person who is essential to the care of the aged or infirm persons; (3) all persons over 70 years of age at time of executing the juror qualification form; (4) volunteer safety personnel (personnel who serve without compensation as fire fighters, members of a rescue squad or ambulance crew for a public agency); (5) Actively practicing attorneys, physicians, dentists, clergy, and registered nurses; and (6) Sole proprietor of a business.

Due to the large geographic distribution and the variable climate of the Northern District, the Court recognizes that the distance a juror may have to travel may cause an undue hardship or extreme inconvenience to the juror. Accordingly, upon individual request the court will consider an application by a prospective juror for excusal from jury service on the bases of undue hardship and excessive travel at the time of summoning. The court hereby defines excessive travel as any distance over seventy miles (one way) from the juror's residence to the courthouse.

#### **VII. EXEMPTION FROM JURY SERVICE**

The Court finds and hereby states that the exemption of the following occupational classes or groups of persons is in the public interest, not inconsistent with the Act, and shall be automatically granted: (1) members in active service of the armed forces of the United States; (2) members of Fire or Police Departments of any State, District, Territory, Possession, or subdivision thereof; (3) public officers in the executive, legislative, or judicial branches of the government of the United States or an State, District, Territory, or Possession or subdivision thereof who are actively engaged in the performance of official duties (public officer shall mean a person who is either elected to public office or who is directly appointed by a person elected to public office).

The names of persons found to be exempt under this section shall not be placed in the qualified wheel.

#### **VIII. DETERMINATION OF QUALIFICATIONS, EXCUSES AND EXEMPTIONS**

This plan hereby incorporates the provisions of 28 U.S.C. Section 1865, which reads as follows:

"(a) The Chief Judge of the district court, or such other district court judge as the plan may provide, or the clerk under supervision of the court on his or her initiative...shall determine solely on the basis of information provided on the juror qualification form and other competent evidence whether a person is unqualified for, or exempt, or to be excused from jury service. The clerk shall enter such determination in the space provided on the juror qualification form (or in the database).



"(b) In making such determination the chief judge of the district court, or such other district court judge as the plan may provide, or the clerk shall deem any person qualified to serve on grand and petit juries in the district court unless he or she--

(1) is not a citizen of the United States eighteen years old who has resided for a period of one year within the judicial district;

(2) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

(3) is unable to speak the English language;

(4) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

(5) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored.

The names of persons found to be disqualified under subsections (b)(1)-(5) above shall not be placed in the qualified wheel.

#### **IX. QUALIFIED JURY WHEEL**

The clerk shall also maintain separate qualified jury wheels for each division in the district and shall place in such wheel the names of all persons drawn at random from the master jury wheels and not disqualified, exempt, or excused pursuant to this plan. Each qualification form as called for by Section 1864, supra, shall bear the number which its addressee bears on the master wheel list. The clerk shall insure that at all times at least **300** names are contained in each such qualified jury wheel. The qualified jury wheel in each division shall be emptied within three months after the master jury wheel for that division is emptied. The qualified wheels may be refilled in one drawing, or in increments; provided, however, that each qualified wheel must always contain no fewer than **300** names.

## **X. DRAWING OF AND ASSIGNMENT TO JURY PANELS**

From time to time the Court or the clerk shall publicly draw at random from the qualified jury wheel or wheels, either manually or by use of a properly programmed data computer, such numbers of names of persons as may be required for assignment to grand or petit jury panels, and the clerk shall prepare a separate list of names of persons assigned to each grand and petit jury panel. These names may be disclosed by the clerk to parties and to the public after said list is prepared and the jurors have been summoned; provided, however, the Court may at any time or from time to time order generally, or with respect to any particular term or terms of Court, that these names be kept confidential in any cases where in the Court's judgment the interest of justice so requires. (28 U.S.C. Section 1863(b) (7))

Summoned jurors claiming individual excuses pursuant to Section VI, subcategories (1)-(2) and (4)-(6) above, shall be excused upon determination that such excuse is valid at the time the juror is summoned.

In addition, the following persons may claim individual excuses when summoned: (1) persons over 70; (2) persons for whom jury service would entail undue hardship or extreme inconvenience, consistent with the criteria set forth in 28 U.S.C. Section 1869, (3) any person who has served as a grand or petit juror in a state or federal court during the past two years immediately preceding his/her call to serve.

When finding of undue hardship or extreme inconvenience is made upon application by a person summoned for jury service, the Court, or by the clerk under the supervision of the Court, will excuse such person from service for such period of time as the Court deems necessary, at the conclusion of which such person's name shall be placed back into the wheel and summoned again for jury service.

If a summoned juror has changed residence from one division of the Court to another division of the Court subsequent to the establishment of the division qualified jury wheel that juror shall be excused from service in the division of original residence for such period of time as the Court deems necessary. At the conclusion of that period, the persons name shall be placed back into the qualified wheel and summoned for jury service in the division of current residence. Prior to the day of selection, jurors summoned to serve and report for service on a grand jury panel who do not request excusal shall, whenever there is an excess of jurors over the number required to impanel the grand jury, be selected for

excusal by random drawing. Except as otherwise ordered by the Court, said jurors shall be permanently excused from service.

Any person summoned for jury service who fails to appear as directed shall be ordered by the district court to appear forthwith and show cause for his failure to comply with the summons. Any person who fails to show good cause for noncompliance with a summons may be fined not more than \$100 or imprisoned not more than three days or both.

**XI. PUBLIC ANNOUNCEMENT OF THE PLACE  
AND TIME WHEN AUTOMATED DRAWING  
OF NAMES WILL BE MADE**

Drawing of names of prospective jurors by automated selection methods shall be publicly made at the designated computer center. The location and approximate time of such drawings shall be publicly announced in a public place such as the bulletin board in the Office of the Clerk.

In order to ensure the exercise of proper supervision and management over the automated aspects of jury selection and its accordance with statutory requirements, the operator of the computer shall comply with the instructions for random selection of grand and petit jurors by electronic machine methods contained in this court's plan for random selection of grand and petit jurors and such additional written instructions as provided by the court.

The office of the Clerk of the Court shall retain and, when requested, provide access to the following public documents:

- the Court's "Juror Selection Plan",
- a verbal or graphically chartered description of the procedure employed in the automated selection system,
- a copy of the Court's authorization and instruction order to the person or computer service organization which carries out automated name selection tasks for the Court, and
- a copy of required public notices, showing where and when posted.

## **XII. DISCLOSURE OF RECORDS**

The contents of records or papers used by the clerk in connection with the jury selection process shall not be disclosed to anyone other than court personnel except pursuant to this plan or as authorized by the Chief Judge or by the Judge designated by order of the Chief Judge to supervise this plan, or as may be necessary in the preparation or presentation of a motion under subsections (a), (b), or (c) of Section 1867 of Title 28 U.S. Code, until after the master wheel has been emptied and refilled pursuant to Section 1863 (b)(4) of Title 28 U.S. Code, and all persons selected to serve as jurors before the master wheel was emptied have completed such service. The parties in a case shall be allowed to inspect, reproduce and copy such records or papers at all reasonable times during the preparation and pendency of such motion. Any person who discloses the contents of any record or paper in violation of this subsection may be fined not more than \$1,000 or imprisoned not more than one year, or both.

## **XIII. GRAND JURY PANELS**

One or more grand juries shall be empaneled for this district or any division of this district for the terms of service at Albany, Binghamton, & Syracuse, or such other places as the court may designate and at such times as the court may order. If a grand jury is to be impaneled for service in a division only, the clerk shall draw at random from the qualified wheel of that division for the grand jury panel such number of prospective grand jurors as the chief judge, or the judge designated by the chief judge to preside over the jury division in which the grand jury is to be impaneled, may direct. If a grand jury is to be empaneled for service in the entire district, the clerk shall draw at random from the qualified wheel of each division for the grand jury panel such number of prospective grand jurors as the chief judge may direct in the same ratio that the number of registered voters or consolidated lists in each division bears to the total number of registered voters or consolidated list in the district. Each grand jury shall serve until discharged by the chief judge, but no regular, criminal grand jury shall serve for more than eighteen months unless the court extends the service of the grand jury for a period of six months or less, upon a determination that such extension is in the public interest. Special Grand Juries as defined in Title 18, Section 3331, shall serve a term of eighteen months unless an order for its discharge is entered earlier by the Court. If, at the end of an eighteen-month term or any extension thereof, the District Court determines the business of the grand jury has not been completed, the court may enter an order extending such term for up to three

additional six month periods. No special grand jury term so extended shall exceed thirty-six months, except as provided in subsection (e) of Section 3333 of Title 18 U.S.C.

The court may direct that alternate jurors may be designated at the time a grand jury is selected. Alternate jurors in the order in which they were designated may thereafter be impaneled to replace excused jurors. Alternate jurors shall be drawn in the same manner and shall have the same qualification as the regular jurors and if impaneled shall be subject to the same challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular grand jurors.

In the interest of achieving administrative economies the court may at any time direct that one grand jury composed of jurors drawn from the qualified wheel of only one jury division shall serve the entire judicial district.

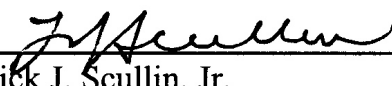
#### **XIV. CHALLENGES TO THE SELECTION PROCEDURES**

Any challenge to this plan or the court's compliance with the provisions of this plan or compliance with the provisions of the Jury Selection and Service Act of 1968 shall be made within the times and in the manner provided in section 1867 of Title 28, United States Code.

#### **XV. ADOPTION OF THE PLAN**

The plan is approved and adopted by the Judges of this District on the date entered below. The plan shall be placed into operation in accordance with the provisions of the Jury Selection Act of 1968, Section 1863(a). Work toward implementing this plan shall begin as soon as practicable after its approval by a reviewing panel consisting of the members of the Judicial Council of the 2nd Circuit and the Chief Judge of this Court, or such District Judge(s) as may be designated by him; and this plan shall take effect upon approval by the reviewing Panel of the U.S. Court of Appeals, 2nd Circuit.

Dated this 11 day of September, 2004

  
\_\_\_\_\_  
Frederick J. Scullin, Jr.  
Chief United States District Court Judge